No. 2300

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A Corporation, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

TRANSCRIPT OF RECORD

VOLUME XVII

PAGES 8575-8619

TITLE

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Is "Report No. 1008, House of Representatives, 62d Congress, 2d Session," Oregon and California Railroad Land Grant, July 16, 1912—committed to the committee of the whole House on the state of the Union, and ordered to be printed. Mr. Robinson, from the Committee on Public Lands, submitted same to accompany H. R. 22002, supplementing the joint resolution approved April 30, 1908, etc.....7273

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Office and other sources, etc., showing thereon, in accordance with legend as marked in different colors, U. S. Surveyor General's Office, U. S. Land offices, Indian Reservations, Military Reservations, National Forests, National Park, National Monuments and Bird Reserves, County Boundaries and Land District Boundaries, Military Roads, Light Houses, and Townships not subdivided by special designation 7303

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Is Department Circular No. 62, October 29, 1907, issued by Treasury Department, subject "Transportation of Government Employees and Property" 7303

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Is Circular No. 16, Quartermaster General's Office, 1912, entitled "Schedule of Land-grant and Bond-aided Railroads of the United States, and instructions concerning settlement of accounts over such roads, with a compendium of United States laws showing the conditions of the grants and subsidies, issued July 1, 1912,

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Washington, Government Printing Office, 1912." At page 42 of this circular appears Section 5, Act of July 25, 1866, 14 Statutes, 239, with reference to Act of June 25, 1868, 15 Statutes, 80, and Act of Congress April 19, 1869, with reference to 16 Statutes, 47; and therewith a map of Land-grant and Bond-aided railroads of the United States, 1912, etc. 7306

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Is a statement purporting to show lands cruised by L. D. McLeod, as classified, present condition as to timber, grazing and agricultural, and when denuded—as to grazing and agricultural 7810

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Is an illustrated article purported to have been written by Henry S. Graves, Chief of the Forest Service, appearing in the Saturday Evening Post, issue of August 17, 1912, entitled "'Farms' in the National Forests", and reprinted in the Congressional Record on August 16, 1912, under the same heading as "Extension of Remarks of Honorable William Kent of California in the House of Representatives" 7810

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Is Bulletin No. 88, issued June 17, 1911, by U. S. Department of Agriculture, Forest Service —Henry S. Graves, Forester; Subject, "Properties and Uses of Douglas Fir." This exhibit at page 11 contains diagram or map purporting to show "The General Range of Douglas Fir", and includes in that range Oregon and Washington lying west of and including the Cascade mountains, and portions of this exhibit are printed as part of the testimony of Homer D. Angell, volume 6, page 2789 of record.....7341

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Is Circular 150, issued January 23, 1909, by U. S. Department of Agriculture, Forest Service, Gifford Pinchot, Forester. Subject, "A Study of the Pacific Coast and Rocky Mountain Forms," etc. Page 13 of circular purports to give the range of Douglas Fir, showing north coast region No. 1 as including Oregon and Washington lying west of and including the Cascade range 7342

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Commerce and Labor, Bureau of the Census, Forest Products, No. 2, Lumber, Lath and Shingles—1910, etc., Forest Service, Henry S. Graves, Forester, issued February 20, 1912. Part of this exhibit is printed in testimony of Homer D. Angell, volume 6, page 2795 of record 7342

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Form used by N. H. Martin in making reports on lands, October 23, 1912 7351

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Letter July 17, 1868, O. H. Browning, Secretary of the Interior, to A. M. Loryea, in regard to filing assent.

May 5, 1871, Walter H. Smith, Assistant Attorney General, to C. Delano, Secretary, expressing opinion as to validity of assignment by the

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Oregon Central Railroad Company to the Oregon and California Railroad Company, and that patents should be issued to the Oregon and California Railroad Company.

May 8, 1871, C. Delano, Secretary, to A. T. Akerman, Attorney General, in reference to claims of W. E. Chandler.

July 16, 1868, A. M. Loryea to O. H. Browning, Secretary of the Interior, advising that Gaston's organization is illegal.

April 30, 1868, resolution of acceptance of grant by Oregon Central Railroad Company April 29, 1868, certified by S. A. Clarke, Secretary O. C. R. R. Co.

May 9, 1871, A. T. Akerman, Attorney General, to C. Delano, Secretary of the Interior, in answer to letter May 8, 1871, above.

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Correspondence between Jos. S. Wilson, President of the European and Oregon Land Company, and Willis Drummond, Commissioner of the General Land Office, running from March 21, 1871, to February 24, 1872, in re status of lands in the grant.

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and report upon first to twelfth sections, both inclusive, of the Oregon and California Railroad from Portland to the Oregon and California State line, with action of President endorsed thereon 7564

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Certified copy of affidavit of H. Villard, of date January 8, 1883, as to completion of railroad to Oregon and California state line 7564

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H. R. Report No. 1664, 1st Session, 48th Congress, "Unearned Land Grants," May 29, 1884 7567

Report No. 931, Forfeiture of lands granted to the California and Oregon Railroad, March 8, 1886, to accompany bill H. R. 6659, from the Committee on Public Lands 7583

Report No. 930, 1st Session, 49th Congress, Forfeiture of lands granted to Oregon and California Railroad, March 8, 1886, to accompany bill H. R. 6658, from the Committee on Public Lands 7600

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Certified copy of stipulation case No. 2661, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by John H. Hall, United States Attorney, and H. M. Hoyt, Acting United States Attorney Gen-

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eral, for complainant, and Wm. D. Fenton and Wm. Singer, Jr., for defendant, filed October 6, 1902 7629

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Certified copy of stipulation case No. 2658, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by John H. Hall, United States Attorney, and H. M. Hoyt, Acting United States Attorney General, for complainant, and Wm. D. Fenton and Wm. Singer, Jr., for defendant, filed December 8, 1902.....7629

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Certified copy of stipulation case No. 2273, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by Joseph McKenna, Attorney General, by Charles J. Schnabel, Assistant United States Attorney, Daniel R. Murphy, United States Attorney, for complainant, and Wm. D. Fenton and Wm. Singer, Jr., and Wm. F. Herrin, for defendant, filed September 1, 1897 7630

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Certified copy of stipulation case No. 2657, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company, signed by John H. Hall, United States Attorney, for complainant, and Wm. Singer, Jr., and Wm. D. Fenton, for defendant, filed December 3, 1902...7630

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Certified copy of stipulation case No. 1936, filed in United States Circuit Court, District of Oregon, United States versus Oregon and California Railroad Company and Oregon Central Railroad Company, and also Oregon and California Railroad Company and Oregon Central Railroad Company versus the United States, signed by F. P. Mays, United States District Attorney, for the United States, and E. C. Bronaugh, L. L. McArthur and Wm. D. Fenton, for the Railway Companies.....7631

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(Form of First Mortgage Construction Bonds of the Oregon Central Railroad Company (West Side).

(Form of Coupon to Bond above described).

(First Mortgage Bond of the Oregon & California Railroad Company of date April 15, 1870).

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ERRATA

Volumes II to XIV, both inclusive, in the inside page of the cover, under the heading "Title, Names and Addresses of Solicitors Upon this Appeal", should appear these words: "For Appellant Union Trust Company, Dolph, Mallory, Simon & Gearin, Portland, Oregon, Miller, King, Lane & Trafford, and John C. Spooner, New York."

Volume IV, last page of Index

Testimony for defendants..page *1820* should be *1920*
B. A. McAllaster.....page *1820* should be *1920*

Volume X, Page 5028

13th line, Jan. 12, *1868* should be Jan. 12, *1869*.

Volume XI, Page 5529

Government's Exhibit 123, in blank space should be printed words: "Page 4047, Volume 8."

Volume XIII. Page 6704.

Defendants' Exhibit 264 "purporting" should be "purports."

Volume XIII, Page 6838

The eleven lines immediately preceding Defendant's Exhibit 289 are a part of Exhibit 289 and should follow said exhibit.

ERRATA—Continued

Volume XIV, Page 7263

Defendants' Exhibit 331. At head of first table should be the words "Benton County."

Page 7304—1st line—add letter *d* to Bon .

Page 7351—3rd line, before "of" put in "limits."

Page 7351—5th line, "rail*way*" should be "rail*road.*"

Page 7360—5th line from bottom—"Wm. D. Singer" The "D" should be omitted.

Page 7383—Defendants' Exhibit 375, first line is left out, insert "Certified copies of telegram Schulze, Land"

Page 7588—1st line, 49th Congress *Vst* session should be *1st.*

ERRATA—Continued

Volume XIV, Page 7791

Before certificate of John B. Coffey, insert "Rec'd for record Sept. 13th, 1881, at 2:30 o'clock P. M."

Volume XV. Page 7839—

10th line—"John B. Coff*ee*" should be "John B. Coff*ey.*"

Volume XV. Page 7920—

10th line—"Wm. D. Fenton" should be "Wm. F. Herrin."

Volume XV, page 8395, Index—

Assignment of Errors of Southern Pacific Company, should be page.....8138

Volume XVI. Page 8651—

11th line—"February 26th, 1914" should follow word "Filed."